

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7258

IN THE MATTER OF:

Served June 20, 2003

VOCA CORPORATION OF WASHINGTON,)
D.C., WMATC No. 342, Investigation)
of Violation of Regulation)
Nos. 61 & 62 and Operation of)
Unsafe and Improperly Licensed)
Vehicles, and Order to Show Cause)

Case No. MP-2002-30

This matter is before the Commission on respondent's response to Order No. 7119, served April 8, 2003. The order directed respondent to immediately bring its operations into compliance with Article XI, Section 5, of the Compact, Commission Regulation Nos. 61 (vehicle markings) and 62 (vehicle leasing), and local vehicle licensing laws. The order also gave respondent thirty days to (a) produce all revenue vehicles for inspection by Commission staff, (b) show cause why the Commission should not assess a civil forfeiture or suspend or revoke Certificate No. 342 for knowing and willful violations of Regulation Nos. 61 and 62 and operation of unsafe and improperly licensed vehicles, and (c) show cause why the partial waiver of Regulation No. 61 granted July 22, 1996, should not be rescinded.

I. BACKGROUND

On July 17, 2002, staff sent a letter to respondent directing respondent to present its vehicles for inspection. Respondent presented five vehicles for inspection on August 6, 2002, thirteen vehicles on August 27, 2002 (including three that had failed inspection on August 6, 2002), one on October 29, 2002, and two on November 11, 2002. According to respondent's insurance company, respondent was operating 42 vehicles as of August 9, 2002. Hence, after four months of inspections the Commission had yet to see almost two-thirds of respondent's fleet.

None of the vehicles presented for inspection passed. Respondent could not produce proof of current safety inspection for three of its vehicles, and several displayed no Regulation No. 61 markings. All had been acquired by lease, but none of the leases had been filed with the Commission as required by Regulation No. 62. One of respondent's vehicles did not display for-hire license plates. Accordingly, Order No. 7119 directed respondent to bring its operations into compliance with Commission regulations, present its vehicles for inspection, and show cause why the past violations should not result in forfeiture, suspension or revocation.

Order No. 7119 also noted that since granting respondent a partial waiver of Regulation No. 61 in 1996, permitting respondent to avoid displaying its name on its revenue vehicles, the Commission has issued operating authority to numerous other carriers performing identical service under the same conditions -- but without the partial waiver. None of those carriers has reported any significant problem with having to comply fully with Regulation No. 61. Respondent therefore was given thirty days to show cause why the partial waiver should not be rescinded.

II. VEHICLE INSPECTION RESULTS

Respondent currently operates thirty-four revenue vehicles, all of which appear to be in compliance with local vehicle licensing laws. Respondent has filed leases for all thirty-four vehicles and has produced thirty-three vehicles for inspection by staff. The one vehicle not produced for inspection is in the shop for repairs. Only one of the vehicles presented for inspection passed, and soon it will be out of compliance with Regulation No. 62.¹

A. Safety Compliance

Article XI, Section 5(a), of the Compact states that each authorized carrier shall provide safe and adequate transportation service, equipment, and facilities. Operation of a vehicle with an expired, invalid or missing safety inspection sticker violates Article XI, Section 5(a).² Such a vehicle is presumptively unsafe.³

Seven of the thirty-three vehicles presented for inspection displayed expired safety inspection stickers.⁴ Three displayed no safety inspection stickers at all.⁵ Thus, ten of respondent's revenue vehicles currently in use are presumptively unsafe. Respondent may not operate these vehicles unless and until respondent furnishes proof that they have passed a proper safety inspection within the past twelve months.

B. Lease Compliance

Commission Regulation No. 62 requires each WMATC carrier to file a lease with the Commission for each non-owned revenue vehicle. Only one of the thirty-four leases filed by respondent is valid. The others

¹ The lease for Vehicle No. 12 expires July 1, 2003.

² In re Junior's Enterprises, Inc., No. MP-01-103, Order No. 6549 (Feb. 21, 2002); In re Safe Transp., Inc., No. MP-96-15, Order No. 4849 (May 17, 1996).

³ Order No. 6549; Order No. 4849.

⁴ Vehicle Nos. 2, 6-7, 10-11, 16, 30.

⁵ Vehicle Nos. 13, 23-24.

are either complete but expired⁶ or unexpired but incomplete.⁷ We will give respondent sixty days to file a complete and unexpired lease for each revenue vehicle.

C. Vehicle Marking Compliance

Commission Regulation No. 61 requires each WMATC carrier to display on both sides of each revenue vehicle the carrier's name or trade name and the carrier's WMATC number. The Commission has granted respondent a partial waiver of Regulation No. 61 permitting respondent to omit its name from the markings placed on its revenue vehicles. Two vehicles presented for inspection, however, did not properly display respondent's WMATC number. One vehicle displayed "WMATC 324" instead of "WMATC 342".⁸ Another displayed the number on one side only.⁹ Respondent may not operate these vehicles unless and until respondent furnishes proof that they properly display respondent's WMATC number.

D. Assessment of Civil Forfeitures

A person who knowingly and willfully violates a provision of the Compact is subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.¹⁰ The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹¹ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard.¹²

Given the results of the inspections, we find that respondent has failed to show good cause for not assessing civil forfeitures. Respondent was given ample warning and opportunity to ensure that its operations complied with Article XI, Section 5(a), of the Compact and Regulation Nos. 61 and 62. Respondent failed to bring its operations into compliance. Under the circumstances, that failure can only be viewed as knowing and willful within the meaning of the Compact.

⁶ Vehicle Nos. 1-2, 4, 6-7, 9-11, 13, 14, 20-21, 25-28, 30-31, 33-34.

⁷ Vehicle Nos. 3, 5, 8, 15-19, 22-24, 29, 32.

⁸ Vehicle No. 18.

⁹ Vehicle No. 33.

¹⁰ Compact, tit. II, art. XIII, § 6(f).

¹¹ In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc., No. MP-02-97, Order No. 7066 (Mar. 4, 2003); Order No. 6549.

¹² Order No. 7066; Order No. 6549.

We will assess a forfeiture of \$500 against respondent for knowingly and willfully operating unsafe vehicles in violation of Article XI, Section 5(a) of the Compact.¹³

We will assess a forfeiture against respondent in the amount of \$250 each, \$500 total, for knowingly and willfully violating Regulation No. 61 and Regulation No. 62.¹⁴

III. JUSTIFICATION FOR PARTIAL WAIVER OF REGULATION NO. 61

In July of 1996, shortly after the Commission approved respondent's application for a certificate of authority, but before the certificate was issued, respondent requested a partial waiver of Regulation No. 61 that would allow respondent to avoid displaying its name on its revenue vehicles. Respondent explained that the vehicles would be parked at group homes for the disabled operated by respondent in residential areas. Respondent argued that the display of respondent's name on those vehicles would attract attention to the group home residents and stigmatize them. The Commission approved the request, and since then respondent has only been required to display its WMATC number.

Since 1996, the Commission has issued operating authority to numerous other carriers that provide identical service under the same conditions as respondent but without any waiver of Regulation No. 61. They have not complained of any stigmatization. Some of these carriers have more suggestive names than respondent, such as District of Columbia Family Services, Inc.; IONA Senior Services; The Arc of the District of Columbia, Inc.; and Metro Homes Inc. It seems appropriate, therefore, that respondent should offer some justification for continuing the partial waiver.

In deciding whether we should continue the partial waiver, we must consider the purposes behind Regulation No. 61. The markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority. Such markings facilitate the processing of customer complaints, as well. The Federal Motor Carrier Safety Administration (FMCSA) has this to say on the importance of vehicle markings.

The FMCSA believes it is important that [vehicles] be properly marked before they are placed into service on the highway. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct

¹³ See Order No. 6549 (assessing forfeiture of \$500 for operating unsafe vehicle).

¹⁴ See Order No. 7066 (assessing forfeiture of \$250 each for violating Regulation Nos. 61 & 62).

motor carrier. It will also ensure the public has an effective means to identify motor carriers operating in an unsafe manner.

65 Fed. Reg. 35287, 35288 (June 2, 2000).

These purposes must be balanced against other considerations. For example, the Commission routinely waives the application of Regulation No. 61 to limousines and sedans because such markings likely would adversely affect the ability of WMATC limousine and sedan operators to compete with their non-WMATC rivals. Non-WMATC limousine and sedan operators generally are not subjected to such vehicle marking requirements by the other limousine and sedan licensing agencies in the local area.¹⁵ While not a consideration in the instant case, this example illustrates the Commission's approach to this issue.

Turning to respondent's justification for continuing the partial waiver, respondent essentially reiterates its argument from 1996. According to respondent:

By placing the name of our company on the vans, we are labeling these adults. This label sets these adults apart from the mainstream neighborhood. It has the connotation that the individuals riding in the vehicle have some type of deficit or deficiency and thus sets them apart from others. Labeling also affects how others treat these individuals. If there is no label there is no indication of who the individuals are and neighbors will be able to form their own independent thoughts. The individuals who live in the neighborhoods will less likely be considered outsiders if their vans are not labeled.

The basic flaw with this argument is that respondent's vans have been labeled for the past seven years, albeit with respondent's WMATC number alone. The real issue here is whether adding "VOCA Corporation of Washington, D.C." would impart a stigmatizing effect not conveyed by respondent's WMATC number. The display of respondent's legal name certainly would be more visible than just the WMATC number, and thus might attract more attention, but respondent could permissibly minimize the visual impact by registering VOCA as a trade name and displaying that name alone in close proximity to the

¹⁵ Regulation No. 61 does not apply to sedans and limousines meeting the criteria specified in Regulation No. 51-09. Such vehicles may operate in the Metropolitan District under local licenses instead of WMATC's regional certificate of authority.

WMATC number already in place. We do not see what negative connotation could be derived from such a nondescript name.

On balance, the weight of the evidence warrants a finding that the public interest would best be served by requiring respondent to comply fully with Regulation No. 61.

IV. CONCLUSION

We will assess a combined forfeiture of \$1,000 for respondent's violations of Article XI, Section 5, of the Compact and Regulation Nos. 61 and 62. Respondent shall not operate the vehicles lacking proof of safety inspection and those improperly displaying respondent's WMATC number unless and until they have passed inspection by Commission staff. Respondent shall have sixty days to file a complete and unexpired lease for each revenue vehicle and to bring each revenue vehicle into full compliance with Regulation No. 61.

THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a civil forfeiture against respondent in the amount of \$1,000 for knowingly and willfully violating Article XI, Section 5, of the Compact, Regulation No. 61 and Regulation No. 62.

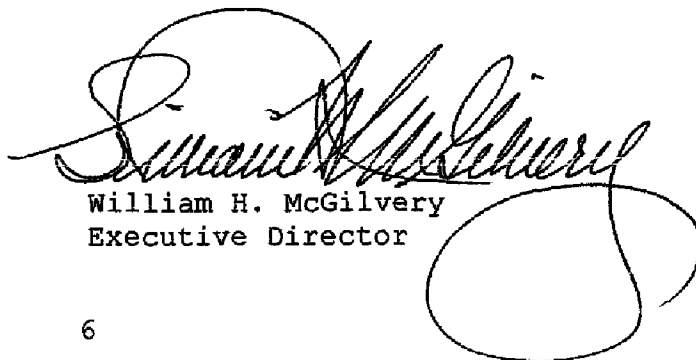
2. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of one thousand dollars (\$1,000).

3. That respondent may not operate Vehicle Nos. 2, 6-7, 10-11, 13, 16, 18, 23-24, 30 and 33 unless and until they pass inspection, as verified in writing by Commission staff.

4. That respondent shall have sixty days to (a) file a complete and unexpired lease for each revenue vehicle, and (b) bring each revenue vehicle into full compliance with Regulation No. 61.

5. That Certificate of Authority No. 342 shall stand suspended, and be subject to revocation without further notice, upon respondent's failure to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND MCDONALD:


William H. McGilvery
Executive Director